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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 36 of 2018**

1. Koshram Sahu Shri Krishna Ram Sahu, Aged About 55 Years Ex. Chairman, State Bar Council of Chhattisgarh Also Presently Member State Bar Council R/o Davara Colony, Pachpedi Naka, Raipur, District Raipur, Chhattisgarh.
2. Ramnarayan Vyas, Advocate, Shri Harinarayan Vyas, Aged About 48 Years Member, State Bar Council Of Chhattisgarh, R/o Vivekanand Nagar, Raipur, District Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. The Secretariat of The President of India Through Its Secretary, Rashtrapati Bhawan, New Delhi. 110004
2. Union of India, Through Ministry of Home Affairs Near North Block, Central Secretariat, Kendriya Terminal New Delhi, 110001
3. Union of India, Through Ministry of Law And Legislative Affairs, 4th Floor, A Wing, Shastri Bhawan, New Delhi, 110001
4. State of Chhattisgarh, Through The Secretary, Department of Home Affairs, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, Chhattisgarh.
5. State of Chhattisgarh, Through The Principal Secretary, Department of Law And Legislative Affairs, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, Chhattisgarh.
6. State of Chhattisgarh, Through The Principal Secretary, Department of General Administration, Mahanadi Bhawan, Capital Complex, Mantralaya, Naya Raipur, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Sunil Otvani, Advocate.
For Respondent/UoI	: Shri B. Gopa Kumar, Assistant Solicitor General.
For Respondent/State	: Shri P.K.Bhaduri, Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****30/10/2018**

1. The Petitioners are practicing Advocates of the State of Chattisgarh. In fact, Petitioner No. 1 has been the former Chairman of the Bar Council of the State of Chhattisgarh and the Petitioner No. 2 has been a member of the

State Bar Council. They seem to be disturbed by the kind of position and status which has been given to the Advocate General of the State vis-a-vis the rank of precedence of persons or functionaries, especially in the State of Chhatisgarh.

2. It is the argument on behalf of the counsel for the Petitioners that since the Advocate General is universally treated as the leader of the Bar, therefore, it is their responsibility to ensure that the leader is given due respect in the warrant of precedence keeping in mind that he is a constitutional post holder and appointed as such.
3. Article 165 of the Constitution of India reads as under:

"165. Advocate General for the State- (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."

4. The framers of the Constitution, therefore, were not unmindful of the fact of the importance of the post of Advocate General and therefore, they did not relegate him to the status of a mere Law Officer to be appointed or engaged by the Executive as a routine. It cannot be also lost sight of as to the kind of person who can be appointed on the post of an Advocate General and the onerous responsibility which the office carries by virtue of the constitutional position.
5. While dealing with a case, the Hon'ble Supreme Court, in case of **Joginder Singh Wasu v. State of Punjab**; (1994) 1 SCC 184, Hon'ble Justice

M.N.Venkatachaliah, the then Chief Justice of India held that the office of an Advocate General is an 'exalted one'. He is the supreme Law Officer of the State.

6. The Petitioners, in their pleadings in the writ application have very meticulously traced the history and the importance of the post in question, which are part of their pleadings and the Court would like to reproduce the same for posterity also, which is as under:

"8.7 Articles 76 and 165 provide respectively for appointment of the Attorney General for India and the Advocate General for the States. It may be mentioned here that, the Office of the Attorney General was created for the first time by our Constitution. Earlier, to the Constitution by section 16 of the Government of India Act, 1935 a similar office, but in the name- the Office of the Advocate General for the Federation was in place.

8.8 The Advocate General and Office of the Advocate General has existed even during the Company Rule and all the three presidencies of Bengal, Madras and Bombay since the first half of the nineteenth century had their own Advocate Generals. Section 111 of the Government of India Act, 1811 referred to the office of the Advocate General. At this time, the Advocate General was an Advocate of the East India Company.

8.9 It is submitted that under the Government of India Act, 1858 i.e. after the British Crown took over the administration of India directly ending the rule of East India Company, under Section 79 of the Government of India Act, 1858 provided for appointment of the Advocate General for the several presidencies were to be made by Her Majesty by warrant under her Sign Manual, so that the Advocate General became a Queen's (or King's) Counsel.

8.10 It is submitted that, the Advocate General thus, is an office more exalted and ancient than that of the Attorney General of India. The Advocate General is the first and Principal Law Officer of the Government and is traditionally the legal advisor of the Government and the legislature. They hold ministerial posts and therefore, change with the Government. They are regarded as the Head of the Bar in their respective countries, and as such are referees on points of professional etiquette. They are consulted by the various departments on legal problems. It is although true that they are responsible to the legislature, however, by tradition they have not been made an active member of the Cabinet because of the quasi judicial functions that an Advocate General discharge with regard to prosecutions and also because it is desirable to separate the giving of advice from those who decide whether to act on the advice. This is briefly put, the nature of the duties of the Advocate General.

8.11 It is submitted that Section 114 of the Government of India Act, 1919 for the first time equated the powers of the Advocate General of Bengal, Madras and Bombay to those of the Attorney General of England in respect of certain proceedings. Although, the Government of India Act, 1919 did not directly specified the duties of the Advocate General, they were the legal advisor of the Government, appeared for the State in civil and criminal matters and discharged duties of a public nature imposed upon them by law in relation to public charitable trusts or in relation to public nuisance or in relation to an inquiry to whether a person is insane or not.

8.12 However, section 55 of Government of India Act, 1935 specifies those duties when it provided that, "it shall be the duty of the Advocate General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor."

8.13 It is submitted that almost similarly worded is the language of Article 165(2) which is again reproduced here;

165. Advocate-General for the State. (1) *The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.*

(2) *It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.*

(3) *The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine."*

8.14 It is respectfully submitted that Article 165(2) makes Advocate General the legal adviser of the State and requires him to do legal work for the State. But the latter part of Art.165(2) requires him to discharge such functions as may be conferred on him by the Constitution and by any other law for the time being in force. It is respectfully submitted that in discharging the functions under any law for the time being in force, the Advocate General does not act for the state, but acts in the discharge of his independent statutory powers and duties. Where certain matters are obviously impressed with a public interest, e.g., the administration of public charitable trusts or the abatement of a public nuisance the law enables the Advocate General to take action either by himself or by sanctioning a suit by two or more relators as provided by section 91 and by section 92 of the C.P.C. and the same position obtains in cases of Contempt of Courts under section 15(1) (a) and (b) of the Contempt of Courts Act, 1971. Again, public interest demands that insurers should not be harassed by frivolous or vexatious

prosecutions. Consequently, section 107 of the Insurance Act, requires the sanction of the Advocate General. These provisions show that wherever discretionary powers are conferred on the Advocate General to take action or to give his sanction, such powers are given for the protection of the public interest.

8.15 It is respectfully submitted that if in a disciplinary inquiry against an Advocate, the Advocate General is the only person (beside the Advocate) who is entitled to a notice of the day fixed for hearing and is entitled to be heard before any order is passed, these rights are conferred on him for the protection of the public interest in the integrity and honour of members of the Bar. His being a leader of the Bar qualifies him more readily to perform this duty for he cannot be indifferent to the honour of the Bar and to the public injury caused to the administration of justice if confidence in the Bar was shaken by the misconduct of Advocates. Further, he is familiar with the problems faced by Advocates in the discharge of their difficult duties when dealing with cantankerous or dishonest clients, and this familiarity gives an assurance that in protecting the public interest, the difficult duties discharged by Advocates will not be over-looked.

8.16 Therefore, it is quite clear that, traditionally the Advocate General of a State is at par with a Minister. According to one of the most authoritative authors on Constitutional law, O-Hood Philips, Constitutional and Administrative Law (5th Edition) Page 289, relied on by H.M. Seervai, Senior Advocate, in his celebrated book Constitutional Law of India a Critical Commentary (4th edition) at page 2081-2082, para 18.95.

8.17 It is submitted that, in the case of Joginder Singh Wasu Vs. State of Punjab (1994) 1 SCC 184 a case relating to reduction in the remuneration granted to the Advocate General, the Supreme Court referring to one of the duties of the Advocate General being to address the Legislative Assembly under Article 177 observed as under in para 18,

“Para 18. Under Article 177 he is conferred the right to audience before the Legislature of a State both in the Assembly and the Council. In fact, he is treated on a par with the Minister. The said article reads as under:

177. Every Minister and the Advocate General for a State shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.”

8.18 A similar view upholding the high status of the constitutional post of Advocate General has been stressed by the Supreme Court in case of M.T. Khan and others Vs. Govt. of A.P. and others (2002) 2 SCC 267 whereunder the Court observed in its para as under;

“10. A bare reading of the said provision clearly goes to show that power of the Governor of the State in this behalf is to appoint a person who is qualified to be appointed a Judge of High Court. Similar expressions have been used by the Constitution-makers for the purpose of appointment of holders of constitutional posts including the Attorney General for India, Comptroller and Auditor General of India, the Chief Justice and Judges of the High Courts and the Supreme Court. The constitutional scheme, thus, is that when a constitutional post is required to be filled up by a person having the qualification specified therefor, he would alone perform the duties and functions, be it constitutional or statutory, attached to the said office. The Constitution does not envisage that such functions be performed by more than one person. The reason therefor is obvious. If more than one person is appointed to discharge the constitutional functions as also the statutory functions, different Advocate Generals may act differently resulting in a chaos. The State and the other litigants would in such an event be totally at a loss as to which opinion/decision is to be acted upon. The office of the Advocate General is a public office. He not only has a right to address the Houses of Legislature but also is required to perform other statutory functions in terms of Section 302 of the Code of Criminal Procedure, Section 92 of the Code of Civil Procedure and Section 23 of the Advocates Act. Each of such functions performed by the Advocate General is of great public importance. Such public functions are required to be performed by the holder of a constitutional post having regard to his stature and keeping in view the fact that the State intended to endow such responsibility upon him.”

A similar view has been taken by a Division Bench of the M.P. High Court in case of State of M.P. Vs. Koshy Mathew (2005) 2 MPLJ 117 wherein the High Court in its para 14 has held as under;

“14. On a perusal of the provision contained under Article 165 of the Constitution and keeping in view the pronouncement of the Apex Court there can be no scintilla of doubt that the office of the Advocate General is an office of great significance and of immense public import as he is required to perform the duties of high public importance...”

(emphasis supplied)

8.19 It is submitted that, the Advocate General cannot be placed below such persons who do not hold constitutional posts and therefore, the order of precedence Govt. of India dated 26.07.1979 (Annexure P/1) and the notification dated 31.12.2013 (Annexure P/2) are challenged..”

7. Keeping the historical perspective as well as the constitutional mandate, if the Petitioners are aggrieved because they feel that appropriate status and

treatment is not being extended by the State in the order of precedence, then the present writ application cannot be easily brushed aside or the reason for their agitating the issue cannot be ignored.

8. We are not concerned about what the other States may have done in this regard. Mere mechanically following something or borrowing something from other States may not do full justice specially when the State of Chhattisgarh, which is a newly created State, has the privilege of undoing what may have been wrongly done over the years in other States.
9. In view of the above, we quash the order of precedence issued in terms of the notification by the State of Chhattisgarh dated 31.12.2012, Annexure P/2 and direct the Chief Secretary, Government of Chhattisgarh, to re-draw the warrant of precedence in relation to the Advocate General of the State giving him befitting status in the hierarchy, keeping in mind what the Court has had to observe, in the earlier part of the order.
10. The writ application is allowed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE